doctrine. Examples in which this is asserted are found in *The Mayor, &c., of Brooklyn* v. *Meserole*,* and in *Heywood* v. *The City of Buffalo*,† and in the cases there cited.‡

The complainant can ask no greater relief in the courts of the United States than he could obtain were he to resort to the State courts. If in the latter courts equity would afford no relief, neither will it in the former.

The second object of the bill—the obtaining of compensation for the property actually appropriated by the city—falls with the first. If the proceedings for its appropriation were void, the title remains in the complainant, and he can resort to the ordinary remedies afforded by the law for the recovery of the possession of real property wrongfully withheld.

DECREE AFFIRMED.

DE GROOT v. UNITED STATES.

1. In bringing appeals to this court from the Court of Claims, the record must be prepared strictly according to the General Rules announced on the subject of that class of appeals at December Term, 1865, and printed at large in 3 Wallace, vii-viii.

   Hence only such statement of facts is to be sent up to this court as may be necessary to enable it to decide upon the correctness of the propositions of law ruled below; and this statement is to be presented in the shape of the facts found by that court to be established by the evidence in such form as to raise the question of law decided by the court. It should not include the evidence in detail.

2. Where a resolution of Congress authorized one of the executive departments to settle, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by certain parties who had contracted to manufacture brick for the government, *Provided* "that the said parties first surrender to the United States all the *brick made*, together with all the *machines* and *appliances*, and other *personal* property prepared for executing the said contract, and that said contract be cancelled," an award is not within the resolution, which, taking a surrender of *real* estate—the brick-yard—where the brick, machinery, and appliances were, makes allowance for *it*. Nor will another award be brought within the submission, because the party, being dissatisfied with the first award, Congress has referred the matter to another executive de-

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* 26 Wendell, 132.

† 4 Kernan, 534.

‡ See also Scott *v.* Onderdonk, Id. 9.

partment, directing *it* to settle the claim, but prescribing for the mode of settlement essentially the same principles by which the settlement was to be made by the department first authorized.

3. Although, as a general rule, where an award exceeds the submission, it is not invalid if the part which is in excess can be separated from the residue; yet where, on a submission of a claim for compensation for breach of contract, an award is made of one gross sum—this embracing an allowance for matters that are not within the submission, as well as for matters that are, and where it is impossible for the court to apportion the parts,—the case is not within the rule. Such an award is not obligatory on the party disadvantageously affected by it.

4. Where the head of one of the executive departments, appointed by resolution of Congress to settle a claim made against the government, exceeds, in making his award, the powers conferred upon him, Congress may revoke, by a repeal of the resolution appointing him, the authority conferred on him. And if, by the repealing act, it refer the case to the Court of Claims, it comes to that court with whatever limitations Congress by its resolution may prescribe; and the court must accept the resolution as the law of that case.

APPEAL from the *Court of Claims*. The case was, in substance, thus:

The United States being engaged in building a large aqueduct at Washington, D. C., De Groot entered into a contract with it to furnish it with several millions of bricks, and to commence the preparation of a *brick-yard* and machinery within a time named, so as to perform the contract of delivery. Some delay or difficulty arising as to the completion of the work, and De Groot having laid out a good deal of money in his enterprise (which, it seemed, included the *purchase of a large brick-yard*), applied to Congress for relief. Congress accordingly, on the 3d March, 1857, passed a joint resolution, "that the Secretary of the Treasury shall settle and adjust with all the parties interested therein, *on principles of justice and equity*, all damages, losses, and liabilities incurred or sustained by said parties respectively on account of their contract for manufacturing brick for the Washington aqueduct;" and he was directed to pay the amount found due out of an appropriation specified. This joint resolution contained, however, the following *proviso:*

"*Provided*, That the said parties *first surrender to the United States all the brick made*, together with *all* the *machinery* and *ap-*

pliances and other *personal* property prepared for executing the said contract, and that the said contract be cancelled."

Soon after the passage of this resolution De Groot made, by deed, a surrender to the United States of "all the brick made, together with all the machinery and appliances and other personal property prepared for executing the contract for manufacturing brick for the Washington aqueduct; which property so surrendered is situated upon the tract of land, containing fifty acres, known as Hunting Park," &c. The deed then recited—

"And whereas the said land was purchased, a brick-yard thereon opened, sheds and kilns erected, a steam engine put up, and machinery and appliances prepared for executing the said contract: And whereas the said premises, with the brick-yard, shed, kilns, engine, and machinery thereon, and the use of the clay and material thereof, are valuable and useful to the United States for manufacturing brick for the Washington aqueduct, and Captain M. C. Meigs, engineer in charge of the Washington aqueduct, has requested possession of said premises, with the use of the clay and materials thereof, for the United States, and possession thereof hath accordingly been given to him:"

And it concluded with a *lease of the brick-yard, sheds, kilns, and appurtenances, to the government for ten years, or until the completion of the aqueduct, together with the privilege of digging and using the clay, &c.*

This being done, the Secretary of the Treasury awarded $29,534.

De Groot received $7576 on account of this award, but being dissatisfied with it as too small, petitioned Congress again on the subject. That body then passed (June 15, 1860) another joint resolution:

"That in the *further execution of the joint resolution of the 3d of March*, 1857, relative to the settlement of the damages, losses, and liabilities incurred by certain parties interested in the contract for furnishing brick for the Washington aqueduct, the Secretary of War is directed and required to settle the account of

W. H. De Groot on principles of justice and equity, allowing to the said De Groot *the amount of money actually expended by him in and about the execution of the said contract;* and also to indemnify him for *such* losses, liabilities, and damages *as by virtue of the said joint resolution he was entitled to receive;* the amount, &c., to be paid out of the fund named in said joint resolution, or if that has been diverted to other purposes, out of any money in the Treasury," &c.

Under this resolution the then Secretary of War, Mr. J. B. Floyd, made an award. After estimating the probable profits of the contract and the price of the brick delivered and surrendered by De Groot under the *proviso*, Mr. Floyd proceeded:

"But it must be remembered that when Mr. De Groot's contract was surrendered, he delivered to the United States the brick-yard at Hunting Park, with its appurtenances, machinery, and improvements. All these he would have retained had his contract been carried out. But this property was surrendered to the United States in compliance with the requirements of the joint resolution of March 3, 1857. It was, I think, clearly the intention of Congress to make compensation for the loss which he thus sustained. And accordingly, in addition to the damages already allowed, it is proper to refund to Mr. De Groot such items of expenditure as were necessarily involved in the purchase and improvement of his brick-yard and its appurtenances. These are stated on the schedule, which is supported by vouchers,

"Amounting to, ...	$29,323 22
Add estimated profits, ...	86,922 81
Add price of brick delivered and surrendered by De Groot,	28,606 34
Total amount, ...	$144.852 37"
[From this amount were deducted the $7576 received by De Groot, and certain other items, amounting, in all, to], .	25,617 91
Leaving a balance of, ...	$119,234 46

This award, for some reason, was not paid; and on the 21st of February, 1861, Congress passed a joint resolution:

"That the joint resolution approved June 15, 1860, for the relief of W. H. De Groot, be, and the same is hereby, repealed; and that the Secretary of War be, and he is hereby, directed to transmit all the papers in his department relating to the case of the said W. H. De Groot to the Court of Claims for adjudication."

In that court De Groot filed his petition, setting forth a history of the case, and stating that he had surrendered the whole entire property to the United States, which the United States had since been using and now occupied. That under the resolution of June 15, 1860, the Secretary of War, after a careful examination of the case and of all the evidence in it, had adjudged that there was due to him $119,234.46. That this award was made August 17, 1860; that it was fairly made, and that the amount still remained due to the claimant. He averred that the joint resolution of 21st February, 1861, repealing the resolution under which the award had been made, was passed after the award had been made and published, and after he had a vested right in it—a right, therefore, of which Congress could not deprive him; and he set up that the said repealing resolution was accordingly void and inoperative.

Without, therefore, submitting any evidence to sustain his original cause of action, De Groot rested his case entirely upon the validity and conclusiveness of the award made by Mr. Floyd, the Secretary of War; giving proof, however, to show that the case was carefully examined by Mr. Floyd, and that his award was given fairly and without interest, corruption, or bias. De Groot accordingly claimed *the amount of the award.*

To the petition presented as above stated the United States demurred.

A majority of the Court of Claims was of opinion "that from the showing of the plaintiff, as alleged in his petition, the Secretary of War had transcended his authority in undertaking to award for the value of the real estate; which was not embraced in the resolution of the 3d of March, 1857, among the property which the parties were required

to surrender, and that the finding of the Secretary was therefore void as an award, because it exceeded the submission." But the court also thought that the facts and circumstances alleged constituted a cause of action independent and irrespective of the award; and that as the repealing resolution referred the case to that court for adjudication, that it would stand there on its merits, unaffected by the award, and to be decided on any proofs submitted. Stating the matter in its own more specific way, the court held and decided, among other things—

"1st. That by including in the award the value or price of the real estate upon which the brick-yard was located, Floyd exceeded the powers conferred upon him by the joint resolutions of Congress.

"2d. That having commingled such allowances with the general finding in such manner as to be incapable of separation, it thereby vitiated the whole award.

"4th. Floyd having thus exceeded the powers conferred upon him, it was competent for Congress to disaffirm his acts and revoke the authority conferred upon him by a repeal of the resolution under which he acted."

And they added as another point: "That no sufficient evidence having been given to sustain any part of the claim, irrespective of Floyd's award, which they had held invalid, judgment had been rendered for the defendants."

The case being thus decided in the Court of Claims, De Groot made known to it his desire to bring it here for review.

The judgment of the Court of Claims was rendered in December, 1865. Subsequently to that date, to wit, at December Term, 1865, the Supreme Court announced among its General Rules,* certain "Regulations," as follows:

* 8 Wallace, vii.

Regulations under which appeals may be taken from the Court of Claims to the Supreme Court.

RULE I.

In all cases *hereafter* decided in the Court of Claims in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other:

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

2. A finding of the facts in the case by the said Court of Claims, and the conclusions of law on said facts on which the court founds its judgment or decree.

The finding of the facts and the conclusion of law to be stated separately, and certified to this court as part of the record.

The facts so found are to be the ultimate facts or propositions which the evidence shall establish, in the nature of a special verdict, and not the evidence on which these ultimate facts are founded. See *Burr* v. *Des Moines Company.**

RULE II.

In all cases in which judgments or decrees have *heretofore* been rendered, when either party is by law entitled to an appeal, the party desiring it shall make application to the Court of Claims by petition for the allowance of such appeal. Said petition shall contain a distinct specification of the errors alleged to have been committed by said court in its ruling, judgment, or decree in the case. The court shall, if the specification of alleged error be correctly and accurately stated, certify the same, or may certify such alterations and modifications of the points decided and alleged for error as in the judgment of said court shall distinctly, fully, and fairly present the points decided by the court. This, with the transcript mentioned in Rule I (except the statement of facts and law therein mentioned), shall constitute the record on which those cases shall be heard in the Supreme Court.

* 1 Wallace, 102.

Under a supposed conformity with these rules, the record in the case had been made. As it came before this court, it consisted of 244 pages. The first forty were occupied by De Groot's petition for appeal. This document contained the petitioner's statement of his case, copies of contracts; of the different resolutions, already mentioned, of Congress; of the awards made by the Secretaries of the Treasury and of War; of pleadings and opinions in the court below and of some other papers.

At the close of the document there was an entry by the court below, that the petition not being, in the opinion of the court, in accordance with the rules prescribed by the Supreme Court of the United States regulating appeals, that the Court of Claims had certified "the following alterations and modifications of the points decided and alleged for error."

The Court of Claims then, itself, made a statement of facts, adding,—the same being presented (*supra*, at p. 424),—what it held and decided upon them; all this occupying only about fourteen pages.

As appearing in the printed transcript before the court, this statement by the court was set pretty much in the body of the book, and was not very distinguishable to the eye from its other various contents. The opinions of the court were annexed at large. The several matters specified occupied the first seventy-two pages of the book. Following this were all the proofs that had been filed in the Court of Claims—these occupying one hundred and seventy-six pages; and, being returned, as it was certified, by request of counsel, in order "to enable the Supreme Court to judge whether plaintiff proved any claim independent of the award, and to review the ruling refusing to strike out defendant's evidence."

On this record the case was now here for review.

Messrs. How, D. D. Field, and Henry Bennett, for the appellant.

Mr. Weed, Assistant Solicitor of the Court of Claims, contra.

Mr. Justice MILLER delivered the opinion of the court.

This is the first appeal from the Court of Claims which we have been called upon to consider since the rules framed by this court regulating such appeals; and the inconsistency between the record presented and the requirements of those rules calls for some observations in this place.

This case, having been decided before they were published, comes under the provisions of the second rule. The object of that rule, as well as of the first, is to present in simple form the questions of law which arose in the progress of the case, and which were decided by the court adversely to appellant. Only such statement of facts is intended to be brought to this court as may be necessary to enable it to decide upon the correctness of the propositions of law ruled by the Court of Claims, and that is to be presented in the shape of the facts found by that court to be established by the evidence (in such form) as to raise the legal question decided by the court. It should not include the evidence in detail.

We have here, beside this simple statement, a record of two hundred and forty pages of printed matter, of which it is fair to say that two hundred are details of evidence excluded by the rule. We were inclined at first to dismiss the appeal for want of a proper record, but upon a closer examination it was discovered that the court below had in good faith complied with the rule, so far as to give the certified statement of the facts found, and of their legal conclusions thereon, and this, with the pleadings, judgment, and other orders in the case, enables us to examine the alleged error in the rulings of the court within the principles we have stated.

The court, however has, at the request of claimant's counsel, returned the evidence on both sides, which makes the bulky and useless part of the record.

We take this occasion to say that we shall adhere strictly to the rules we have prescribed, and shall regard no other matter found in the transcripts sent to us than what they allow, and that in proper cases the costs of the useless part of the record will be taxed against the party who brings it here.

With these preliminary remarks, we proceed to examine the merits of the case.

It is a claim against the United States founded on an award. The statement of facts by the court below informs us that "the claimant has not seen proper to submit any evidence to sustain his original cause of action, but rests his case entirely upon the validity and conclusiveness of the award made by the Secretary of War."

Among other conclusions of law, the court held the following in reference to this award, which, as they dispose of the case, are all that we need consider.

"1st. That by including in the award the value or price of the real estate upon which the brick-yard was located, Floyd exceeded the powers conferred upon him by the joint resolutions of Congress.

"2d. That having commingled such allowances with the general finding in such manner as to be incapable of separation, it thereby vitiated the whole award.

"4th. Floyd having thus exceeded the powers conferred upon him, it was competent for Congress to disaffirm his acts and revoke the authority conferred upon him, by a repeal of the resolution under which he acted."

That part of the record which is here decided not to be within the submission is thus stated in the award itself:

"It must be remembered that when Mr. De Groot's contract was surrendered he delivered to the United States the brick-yard at Hunting Park, with its appurtenances, machinery, and improvements. All these he would have retained had his contract been carried out. But this property was surrendered to the United States in compliance with the requirements of the joint resolution of March 3, 1857. It was, I think, clearly the intention of Congress to make compensation for the loss which he thus sustained. And, accordingly, in addition to the damages already allowed, it is proper to refund to Mr. De Groot such items of expenditure as were necessarily involved in the purchase and improvement of his brick-yard and its appurtenances.

"These are stated on the schedule, which is supported by vouchers, amounting to	$29,323 22
Add estimated profits, ...	86,922 81
Add price of brick delivered and surrendered by De Groot, .	28,603 34
Total amount, ...	$144,852 37"

The award then deducts certain payments made, leaving a balance of $119,234.46.

The joint resolution above mentioned of March 3, 1857, lies at the foundation of this claim.

And it is pretty clear that, without the *proviso* at the close of the resolution, the Secretary could have acted on no other principle than that of compensating the parties interested for losses and damages growing out of a suspension or abandonment of the contract by the government, and that this must have been based upon the position of the parties as they stood at the time the resolution passed. What brick the claimants had delivered would have been the property of the United States. All the brick they had on hand not delivered, with the materials, tools, machines, and grounds, would have been the property of claimants, and the damages growing out of this branch of the inquiry would have been the loss sustained by these being rendered useless or less valuable to their owners, because no longer required in fulfilling the contract to make brick.

In what respect, then, does the proviso change this basis of estimating damages? It changes it by requiring the claimants to transfer to the United States certain things they were using in the manufacture of brick for the government, and allowing compensation for the value of those things, instead of damages for their deterioration. The things thus to be surrendered were "all the brick made, together with all the machinery and appliances, and other personal property prepared for executing the contract."

It is not possible to hold that the land on which the bricks were made, or any improvements on it which had become part of the realty, comes within any of the classes of property here enumerated. It was not bricks; it was not machinery or appliances, and it was not personal property. The

phrase "other personal property" implies that only personal property had been previously described.

It is true that the Secretary of War, in making his award, did not derive his power to act as arbitrator from the joint resolution which we have been construing, but from another joint resolution of June 15, 1860. The first resolution referred the matter to the Secretary of the Treasury, and that officer having made his award. Mr. De Groot, after receiving under it $7576, refused to abide by it, and applied to Congress for further relief. That body referred his claim to the Secretary of War by the resolution of June 15, 1860, but directed him to proceed in the further execution of the resolution of March 3, 1857, and to indemnify De Groot for such losses, liabilities, and damages as by virtue of said joint resolution he was entitled to receive. It will thus be seen, that while the tribunal was changed, it was to be governed by the principles prescribed by the resolution which we have just construed.

The Secretary of War, then, manifestly exceeded his powers as arbitrator when he awarded to claimant the value of the real estate on which the brick-yard was located, and the money involved in the purchase of it by said claimant.

It is, however, not always that an award is invalid because in some respects it exceeds the submission, for it is said that if the part which is in excess can be clearly separated from the remainder which is within the submission, the latter may stand.

This, as a general rule, is true, but it is subject to some qualifications, one of which is expressed by Chief Justice Marshall, speaking for this court in the case of *Carnochan* v. *Christie*,* to the effect, that the award to be valid ought to be in itself a complete adjustment of the controversies submitted to the arbitrators.

There is no means by which the sum allowed by the Secretary for this land can be separated from the other allowances made for the personal property, machines, and appli-

* 11 Wheaton, 446.

ances transferred by claimant to the United States. They are all summed up in one grand item of $29,323.22. What proportion of this item is for the land it is impossible to tell. If we reject the whole of this item, then the claimant has no allowance for the machines, appliances, and personal property transferred to the government, and for the real loss in the purchase of land, and improvements placed on it for this specific purpose, the value of which must be much diminished by diverting it from that use.

It thus appears that the arbitrator has exceeded his authority in some respects, that he has failed to award as to other matters submitted to him, and that in the award made, these matters cannot be distinguished from each other.

The United States cannot, after having twice referred these matters to arbitration—the second time on account of the dissatisfaction of the claimant with the result of the first—be bound now to accept an award which clearly does not dispose of part of the demands submitted, and which allows large sums for matters not submitted.

If these views be sound, the two first propositions of law decided by the Court of Claims were well decided.

We think the fourth proposition equally clear.

The government of the United States cannot be sued for a claim or demand against it without its consent. This rule is carried so far by this court, that it has been held that when the United States is plaintiff in one of the Federal courts, and the defendant has pleaded a set-off which the acts of Congress have authorized him to rely on, no judgment can be rendered against the government, although it may be judicially ascertained that on striking a balance of just demands the government is indebted to the defendant in an ascertained amount. And if the United States shall sue an individual in any of her courts, and fail to establish a claim, no judgment can be rendered for the costs expended by the defendant in his defence.

If, therefore, the Court of Claims has the right to entertain jurisdiction of cases in which the United States is defendant, and to render judgment against that defendant, it

is only by virtue of acts of Congress granting such jurisdiction, and it is limited precisely to such cases, both in regard to parties and to the cause of action, as Congress has prescribed.

It is true that ordinarily, when we seek for the foundation of this jurisdiction, we look to the general laws creating the court, and defining causes of which it may have cognizance. But it is equally true that whenever Congress chooses to withdraw from that jurisdiction any class of cases which had before been committed to its control, as it has done more than once, it has the power to do so, or to prescribe the rule by which such cases may be determined. Its right to do this in regard to any particular case, as well as to a class of cases, must rest on the same foundation; and no reason can be perceived why Congress may not at any time withdraw a particular case from the cognizance of that court, or prescribe in such case the circumstances under which alone the court may render a judgment against the government.

The Court of Claims, in the adjudication of the case before us, has been acting under one of these special acts of the legislative department. A third joint resolution on the subject of this claim was passed by Congress and approved July 21st, 1861, some months after the award of the Secretary of War was published. This resolution declares "that the joint resolution approved June 15th, 1860, for the relief of W. H. De Groot, be, and the same is hereby, repealed, and that the Secretary of War be, and he is hereby, directed to transmit all papers in his department relating to the case of said W. H. De Groot to the Court of Claims for examination."

The case being thus transferred from the Secretary of War to the Court of Claims, with a repeal of the resolution under which the Secretary had acted, must be considered as coming into that court with the limitations prescribed by that resolution. This shows very clearly that Congress intended that no judgment should be rendered against the government on the award of the Secretary of War, but that the examination to be made by the Court of Claims should be

free from that embarrassment. Could that court entertain jurisdiction of the case, and violate this requirement?

It is said by claimant that the case did not come into that court under that resolution, but was brought there by his own petition. But, however it may have come there, the rule prescribed by Congress adheres to it, if Congress had the right to prescribe it. Entertaining no doubt of the power of the legislative body to define the terms on which judgments may be rendered against the government as to classes of cases, or as to individual cases, we think the Court of Claims was bound to accept the resolution of February, 1861, as the law of the case in that court. The effect of this resolution on the award, if it should ever come in question in a court not limited by the restrictions which govern that court, we need not decide.

As we can only consider here, what judgment that court should have rendered, we conclude that its judgment was right, and it is therefore

AFFIRMED.

NICHOLS v. LEVY.

1. Where a State court,—interpreting a statute of its own State, which gave such court jurisdiction to subject legal and equitable interests in real estate to the claim of creditors,—decided that the statute embraced trusts like one in question (which judgment creditors were seeking to set aside), and that it exempted the property embraced by the trust from liability to such creditors—this court followed that construction of the statute and sustained the trust, though they remarked that if the question had been to be treated by them on general principles of jurisprudence, and independently of the State decision on the statute, the judgment would necessarily have been the other way.
2. An estate in vested remainder is liable to debts the same as one in possession. *Hence*, where creditors seek to subject, by bill in equity, to their claims an estate in such vested remainder, and it is decided that they cannot do it, the matter will be considered as *res adjudicata*, if they afterwards try to levy, by execution, on the same property, when, by the death of the tenant for life, it has become an estate in possession.

THIS was an appeal from the Circuit Court of the United States for the Middle District of Tennessee.

In that court, James Beal Nichol and John Nichol, Jr